Supreme Court, U.S.
FILED
DEC 24 1980
MICHAEL RODAK, JR., CLERK

80-1045

No. ———

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

WAYNE S. BISHOP
THOMAS P. GIES
JEAN C. [illegible]NNESS
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 463-2400

Attorneys for Petitioners Jacksonville Bulk Terminals, et al.

Of Counsel

KENNETH A. MCGAW
Post Office Box 4289
Houston, Texas 77210

Dated: December 24, 1980

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

1. Does a union-instigated work stoppage motivated by its political disapproval of an employer's international trade relationships involve or grow out of a "labor dispute" within the meaning of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104.

2. Whether a federal district court has jurisdiction to enjoin a strike precipitated, at least in part, by a disagreement about the employer's authority to decide with whom it will do business, where the applicable collective bargaining agreement, containing a broad no-strike clause and a provision for mandatory and binding arbitration of all "matters under dispute" between the union and employer, expressly reserves to the employer complete control over the management of its business and direction of its work force.

3. Whether this Court should reconsider its decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), in light of its application by lower courts in opinions that effectively deprive an employer of the benefit of the union's promise not to strike in return for the employer's commitment to arbitrate disputes between the parties.*

---

* The following parties participated in the proceedings in the United States Court of Appeals for the Fifth Circuit: Jacksonville Bulk Terminals, Inc.; Hooker Chemical Corporation; Occidental Petroleum Corporation; International Longshoremen's Association; Local Union 1408, International Longshoremen's Association; Landon Williams, individually and as President of Local 1408; Melvin Andrews, individually and as Vice-President of Local 1408; Oliver Collins, individually and as Treasurer of Local 1408; Paul Fields, individually and as Business Agent of Local 1408; and all other members of Local 1408 of the International Longshoremen's Association, or of any other labor organization acting in concert with the named defendants.

TABLE OF AUTHORITIES

Cases:	Page
Afroyim v. *Rusk*, 387 U.S. 253 (1967)	11
Boys Markets, Inc. v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970)	6, 9, 10
Buffalo Forge Co. v. *United Steelworkers*, 428 U.S. 397 (1976)	6, 9, 10, 11, 12
Complete Auto Transit, Inc. v. *Reis*, 614 F.2d 1110 (6th Cir. 1980)	12
Design and Manufacturing Corp. v. *Auto Workers Local 2042*, 608 F.2d 767 (7th Cir. 1979)	12
Gateway Coal Co. v. *United Mine Workers*, 414 U.S. 368 (1974)	9
Harrington & Co., Inc. v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973)	8
Khedivial Line v. *Seafarers' International Union*, 278 F.2d 49 (2d Cir. 1960)	6
National Maritime Union v. *NLRB*, 342 F.2d 538 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965)	8
NLRB v. *International Longshoremen's Association (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964)	7
Northcross v. *Board of Education*, 412 U.S. 427 (1973)	8
Textile Workers Union v. *Darlington Manufacturing Co.*, 380 U.S. 263 (1965)	10
Textile Workers Union v. *Lincoln Mills*, 353 U.S. 448 (1957)	10, 11
United States Steel Corp. v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *cert. denied*, 428 U.S. 910 (1976)	8
Waller Brothers Stone Co. v. *Steelworkers*, 620 F.2d 132 (6th Cir. 1980)	12
West Gulf Maritime Association v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976)	8

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	6
I. THE DECISION OF THE COURT BELOW CONCERNING AN IMPORTANT QUESTION OF FEDERAL STATUTORY CONSTRUCTION IS IN DIRECT CONFLICT WITH INDISTINGUISHABLE DECISIONS OF OTHER APPELLATE COURTS	6
II. THE DECISION OF THE LOWER COURT MISAPPLIED THE EXCEPTION TO THE NORRIS-LAGUARDIA ANTI-INJUNCTION POLICY DEFINED BY THIS COURT IN *BOYS MARKETS* AND *BUFFALO FORGE*	9
III. THIS COURT SHOULD RECONSIDER ITS HOLDING IN *BUFFALO FORGE* IN LIGHT OF ITS EFFECTIVE DENIAL TO EMPLOYERS OF THE *QUID PRO QUO* FOR THEIR COMMITMENTS TO ARBITRATE	11
CONCLUSION	13
APPENDIX A	1a
APPENDIX B	26a
APPENDIX C	36a

Statutes:

	Page
28 U.S.C. § 1254(1)	2
29 U.S.C. § 104	2, 5, 6
29 U.S.C. § 113	2
29 U.S.C. § 113(c)	5, 7
29 U.S.C. § 152(9)	3, 7
29 U.S.C. § 185	3, 5

Miscellaneous:

Comment, "Labor Law—Availability of Injunctive Relief to Restrain Sympathy Strikes," 43 Mo. L. Rev. 503 (1978)	11
Freed, "Injunctions Against Sympathy Strikes: In Defense of Buffalo Forge," 54 N. Y. U. L. Rev. 289 (1979)	11
Gould, "On Labor Injunctions Pending Arbitration: Recasting Buffalo Forge," 30 Stan. L. Rev. 533 (1978)	11
Lowden & Flaherty, "Sympathy Strikes, Arbitration Policy, and the Enforceability of No-Strike Agreements—An Analysis of Buffalo Forge," 45 Geo. Wash. L. Rev. 633 (1977)	11
Smith, "The Supreme Court, Boys Markets Labor Injunctions and Sympathy Work Stoppages," 44 U. Chi. L. Rev. 321 (1977)	11

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. ———

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM CORPORATION,
Petitioners

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR A WRIT OF CERTIORARI

Petitioners, Jacksonville Bulk Terminals, Inc., Hooker Chemical Corporation and Occidental Petroleum Corporation, respectfully pray that a Writ of Certiorari issue to review the opinion, judgment and order of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported officially at 626 F.2d 455 and is reproduced herein as Ap-

pendix A. The opinion rendered by the district court, which is unreported, is reproduced herein as Appendix B.

JURISDICTION

The judgment of the court of appeals was entered on September 25, 1980 (Appendix A). Petitioners invoke the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The statutory provisions involved most directly herein are as follows:

United States Code, Title 29:

§ 104. *Enumeration of specific acts not subject to restraining orders or injunctions*

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

§ 113. *Definition of terms and words used in chapter*

. . . .

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Other relevant statutory provisions involved are Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 and Section 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9); these are reproduced in Appendix C.

STATEMENT OF THE CASE

This case arises from a dispute between Respondents, the International Longshoremen's Association, its Local Union 1408, and their officers and agents (the "Union"), and Petitioners, Jacksonville Bulk Terminals, Inc. ("JBT"), Hooker Chemical Corporation ("Hooker"), and Occidental Petroleum Corporation ("Occidental"), over the shipment of superphosphoric acid ("SPA") to the Soviet Union.[1] JBT operates a bulk marine shipping termonal at the Port of Jacksonville, Florida, from which SPA produced by Hooker is shipped to the Soviet Union pursuant to a bilateral trade agreement between Occidental and the Soviet Union. Respondents represent longhroremen in the Port of Jacksonville who work out of a hiring hall maintained by Local 1408.

As a member of the Jacksonville Maritime Association, Inc., JBT has a current collective bargaining agreement with Respondents covering longshoring and related activities at the Port of Jacksonville. This collective bargaining agreement contains a clause prescribing a mandatory grievance and arbitration procedure to be followed in all disputes between JBT and Respondents. This clause states:

> 15. (B) Matters under dispute which cannot be promptly settled between the Local and an individual Employer shall, no later than 48 hours after such

---

[1] JBT is a wholly-owned subsidiary of Oxy Chemical Corporation, which is a subsidiary of Hooker. Ownership of all these corporations is ultimately vested in Occidental (App. B p. 30a).

> discussions, be referred in writing covering the entire grievance in a Port Grievance Committee . . . .
>
> . . . .
>
> A majority decision of this Committee shall be final and binding on both parties . . . .

(App. A, p. 7a). In addition, the collective bargaining agreement includes an explicit no-strike clause which provides:

> [T]he Union agrees there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown or any other interference or stoppage, total or partial, of the Employer's operation for any cause whatsoever; such causes including but not limited to, unfair labor practices by the Employer or violation of this Agreement. The right of employees not to cross a bona fide picket line is recognized by the Employer. The Union shall not be financially responsible for strikes or walkouts not authorized or assented to by the Union.

(App. A, p. 7a). The collective bargaining agreement also contains a clause expressly reserving to JBT complete control over the management of its business and the direction of its work force:[2]

> 13. (F) The Management of the Employer's business and the direction of the work force in the operation of the business are exclusively vested in the Employer as functions of Management. Except as specifically provided in the Agreement, all of the rights, powers and authority Employer had prior to signing of this Agreement are retained by Employer.

On January 4, 1980, the President of the United States announced that certain restrictions would be im-

---

[2] A copy of this collective bargaining agreement was attached as Exhibit A to Petitioners' complaint filed in the district court.

posed on trade with the Soviet Union in retaliation for the Soviet Union's invasion of Afghanistan. Although SPA was not included in that Presidential embargo,[3] Respondent International adopted a resolution urging its members to refuse to load any cargo shipped to or from the Soviet Union. Respondent Local 1408 complied with this resolution by refusing to load three ships which arrived at JBT's Jacksonville terminal during January 1980 to receive SPA for transport to the Soviet Union.

In response to the refusal by Respondent to perform the work requested by JBT, Petitioners filed a complaint in the United States District Court for the Middle District of Florida, pursuant to Section 301 of the Labor-Management Relations Act, as amended, 29 U.S.C. § 185. Petitioners sought both damages and injunctive relief against the Respondents' continued work stoppage. Noting that the underlying dispute between Respondents and Petitioners was not a "labor dispute" within the meaning of Section 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c), because the dispute involved a political issue, the district court concluded that it was not precluded by Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, from granting the injunctive relief requested by Petitioners (App. B, pp. 32a-33a). The district court issued a preliminary injunction restraining Respondents from calling, instigating, directing, encouraging or participating in any strike, or a work stoppage relating to the three vessels then in the Port of Jacksonville, and ordered the parties to arbitrate their dispute in accordance with the terms of paragraph 15(B) of their collective bargaining agreement (App. B, pp. 26a-27a, 35a).

The Fifth Circuit, on September 25, 1980, vacated the preliminary injunction issued by the district court, finding that Respondents' work stoppage, even though it was

---

[3] On February 25, 1980, the embargo was extended to include SPA along with other phosphates (App. A, pp. 7a-8a).

called to further the political goals of the Union, did "involve or grow out of [a] labor dispute" for purposes of the Norris-LaGuardia Act. Accordingly, the court of appeals decided that the anti-injunction policy of the Norris-LaGuardia Act governed the case unless the exception to that policy expounded in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), was applicable. The Fifth Circuit concluded, however, that the *Boys Markets* exception was not applicable to the facts of this case because Respondents' strike was not "over" any dispute that Respondents had agreed to arbitrate within the meaning of this Court's decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976) (App. A, p. 21a).

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW CONCERNING AN IMPORTANT QUESTION OF FEDERAL STATUTORY CONSTRUCTION IS IN DIRECT CONFLICT WITH INDISTINGUISHABLE DECISIONS OF OTHER APPELLATE COURTS

In deciding that a strike called to further the political goals of a union falls within the purview of 29 U.S.C. § 104 as a case "involving or growing out of any labor dispute," the Fifth Circuit below recognized that its decision was in direct conflict with the holding of the Second Circuit in *Khedivial Line* v. *Seafarers' International Union*, 278 F.2d 49, 51 (2d Cir. 1960) (App. A, p. 16a). In that case the Seafarers' Union and the ILA struck and picketed a cargo vessel owned by a private corporation of the United Arab Republic in retaliation for a blacklist instituted by the UAR against vessels which had carried cargo to Israel. Overturning a district court decision that the Norris-LaGuardia Act precluded the issuance of an injunction against picketing in these circumstances, the Second Circuit found that as broad "as the Act's definition of 'labor dispute' is it is not broad enough to encompass a dispute solely with

the policies of the government of the shipowner." 278 F.2d at 51. According to the Second Circuit, even if it were assumed that the Seafarers' dispute was over the loss of jobs to American seamen resulting from the United Arab Republic's blacklist, it was not a labor dispute because "whatever had been done here was the United Arab Republic's doing, not plaintiff's." 278 F.2d at 51.

The decision of the Fifth Circuit below is also at odds with the holding of the Fourth Circuit in *NLRB* v. *International Longshoremen's Association* (*Ocean Shipping*), 332 F.2d 992 (4th Cir. 1964). In that case, the Fourth Circuit found that the ILA's refusal to load ships trading with Cuba was not a "labor dispute" within the meaning of Section 2(9) of the National Labor Relations Act, 29 U.S.C. § 152(9).[4] Furthermore, because the definition of "labor dispute" set forth in Section 2(9) of the National Labor Relations Act is almost identical to the operative definition of "labor dispute" under Section 13(c) of the Norris-LaGuardia Act, 29 U.S.C. § 113(c) (App. C), the Fifth Circuit's divergence in the instant

---

[4] In *Ocean Shipping* the Fourth Circuit reasoned as follows in arriving at the conclusion that no "labor dispute" was involved:

> Essentially, Ocean's grievance relates to actions of ILA which are political in nature. As the NLRB found, ILA was 'implementing a 'clearly defined policy calculated to eliminate trade with Cuba.' Dissatisfaction with ILA's policy of refusing to work ships that have engaged in trade with Cuba does not constitute a controversy grounded in the 'terms and conditions of employment.' Not every activity of a labor organization, not even every controversy in which it may become involved, is a 'labor dispute' within the statutory meaning. Cf. N.L.R.B. v. Miranda Fuel Co., 326 F.2d 172, 180 (2d Cir. 1963). Terms and conditions of employment are not in dispute here. The union activity here pertains to a general political question, in which ILA shares an interest with all citizens. It is not seeking to alter any terms or conditions of employment.

332 F.2d at 995-96.

case from the Fourth Circuit's interpretation of "labor dispute" in *Ocean Shipping* violates the principle of statutory construction which holds that statutes *in pari materia* should be interpreted in a like manner. *See Northcross* v. *Board of Education*, 412 U.S. 427, 428 (1973).[5]

That these conflicting decisions troubled the Fifth Circuit in the instant case[6] is evident by its failure to articulate how its construction of "labor dispute" to include political differences of the kind at issue in this case can be reconciled with the statutory definition set forth in the Norris-LaGuardia Act. Given this open disagreement among the circuits as to the scope of the anti-injunction prohibition of this statute, and the Fifth Circuit's unwarranted deviation from its clear language, review of the judgment below by this Court is justified to clarify an important question of federal court jurisdiction.

---

[5] This principle of statutory construction has been applied directly to the provisions at issue in this case. *See National Maritime Union* v. *NLRB*, 342 F.2d 538, 541 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965), where the Second Circuit found that since the operative definitions of "labor dispute" in both statutes are "virtually identical," they should be construed consistently with one another.

[6] The court acknowledged the existence of contrary precedent, even within the Fifth Circuit. *West Gulf Maritime Association* v. *International Longshoremen's Association*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd without opinion*, 531 F.2d 574 (5th Cir. 1976) (App. A, p. 15a). *See also Harrington & Co., Inc.* v. *International Longshoremen's Association*, 356 F. Supp. 1079 (S.D. Fla. 1973). *Cf. United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *cert. denied*, 428 U.S. 910 (1976).

II. THE DECISION OF THE LOWER COURT MISAPPLIED THE EXCEPTION TO THE NORRIS-LAGUARDIA ANTI-INJUNCTION POLICY REFINED BY THIS COURT IN *BOYS MARKETS* AND *BUFFALO FORGE*

Having decided that the dispute between Respondents and JBT fell within the purview of the Norris-LaGuardia Act, the Fifth Circuit further concluded that strict adherence to the anti-injunction rule of Norris-LaGuardia was necessary because the exception to that rule established by *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235 (1970), did not apply on the facts of this case. Examining the criteria for issuance of a *Boys Markets* injunction outlined by this Court both in *Boys Markets* and in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397 (1976), the Fifth Circuit decided that an injunction could not be issued in the instant case because the Respondents' work stoppage was not "over any dispute between the Union and the employer that was . . . subject to the arbitration provisions of . . . [their] contract." 428 U.S. at 407.

The analysis of the court below ignores the fact that, in determining whether the dispute underlying a strike concerns an arbitrable matter, this Court has instructed lower courts to look at the entire bargaining agreement to see whether the strike had "the purpose or the effect of denying or evading an obligation to arbitrate or of depriving the employer of its bargain." *Buffalo Forge, supra*, 428 U.S. at 408. Furthermore, it disregards the rule that in making this determination, the court is obliged to resolve doubts in favor of the often announced presumption of arbitrability. *See, e.g., Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 377-78 (1974).

Although the Respondents' work stoppage was intended primarily as a protest against the Soviet interven-

tion in Afghanistan, it had, in addition, both the purpose and effect of precluding Petitioners from doing business with the Soviet Union. As paragraph 13(F) of the collective bargaining agreement reflects, however, JBT bargained for and received explicit recognition by Respondents of its right to manage its own business. Such a right has traditionally included the right to decide with whom the employer will do business. *See generally Textile Workers Union* v. *Darlington Manufacturing Co.*, 380 U.S. 263, 268, 270 (1965). Any disagreement between JBT and Respondents about the scope of the authority specifically reserved by JBT under paragraph 13(F), or about JBT's exercise of this authority, was subject to mandatory arbitration pursuant to paragraph 15(B) of the parties' collective bargaining agreement. Indeed, in paragraph 15(B) JBT specifically acceded to binding arbitration of such matters along with all "matters under dispute." Reciprocally, Respondents guaranteed in paragraph 15(A)(1) of the agreement that they would forebear engaging in "any strike of any kind or degree whatsoever . . . for any cause whatsoever" during the term of the contract. The union's strike was "over" an arbitrable issue because the parties disagreed over the application of paragraph 13(F), which on its face gives solely to JBT the right to decide with whom it does business. As such, the Union's strike prior to arbitration evaded the employer's right to arbitration and operated to deprive the employer of its bargain. Hence, the Fifth Circuit below misapplied the principles of *Boys Markets* and *Buffalo Forge*, effectively negating the policy underlying Section 301 expressed by this Court that "unions as well as employers should be bound to collective bargaining agreements . . . [and] that there be a procedure for making such agreements enforceable in the Courts. . . ." *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 453 (1957).

III. THIS COURT SHOULD RECONSIDER ITS HOLDING IN *BUFFALO FORGE* IN LIGHT OF ITS EFFECTIVE DENIAL TO EMPLOYERS OF THE *QUID PRO QUO* FOR THEIR COMMITMENTS TO ARBITRATE

The practical effect of the Fifth Circuit's opinion is to permit unions to engage in political strikes, despite their prior pledge in collective bargaining agreements not to strike "for any reason whatsoever." That such a result defeats the employer's expectation of an "assurance of uninterrupted operation during the term of the agreement," *Lincoln Mills*, 353 U.S. at 454, is manifest. It is similarly clear that this result is inherently disruptive of the goal of national labor policy favoring peaceful resolution of labor disputes.

This case thus provides an appropriate vehicle for reconsideration of *Buffalo Forge* as inconsistent with national labor policy to the extent that it has been read as permitting, outside the arena of the sympathy strike situation presented in *Buffalo Forge*, union economic action in breach of a no-strike clause in cases where there is doubt about the arbitrability of the underlying dispute. *See Afroyim* v. *Rusk*, 387 U.S. 253, 255 (1967).

Indeed, this case clearly shows the unfortunate results obtained when the union's promise not to strike, the *quid pro quo* for the employer's agreement to submit to binding arbitration, is divided into two parts. *Buffalo Forge*, 428 U.S. at 413 (Stevens, J., dissenting). Recognizing the strength of the dissent in *Buffalo Forge*, most commentators have agreed that the Court's decision deprives employers of a critical element of their bargain and, accordingly, undermines the incentive of employers to agree to submit disputes to arbitration in exchange for a union's no-strike pledge.[7]

---

[7] *See generally* Gould, "On Labor Injunctions Pending Arbirtation: Recasting Buffalo Forge," 30 Stan. L. Rev. 533 (1978); Lowden & Flaherty, "Sympathy Strikes, Arbitration Policy, and the Enforceability of No-Strike Agreements—An Analysis of Buffalo

The Fifth Circuit's opinion further demonstrates that the result feared by the *Buffalo Forge* majority, "massive" entry by the courts into the business of contract interpretation, has nonetheless occurred. 428 U.S. at 414.[8] Since *Buffalo Forge*, in fact, a district court's task has become much more difficult, given the requirement that the court analyze every contract provision that the employer claims makes the underlying dispute arbitrable.

The instant case establishes a new and heretofore unexpected economic weapon. The Fifth Circuit's decision permits a union to strike for any reason, including political disagreement with the employer's choice of customers, irrespective of its no-strike pledge, unless the employer can convince a district court that the work stoppage was prompted by a grievance over a specific term in the collective bargaining agreement. Such a result eviscerates the presumption of arbitrability in labor disputes, and provides unions with a weapon not contemplated by the Act or by federal labor policy. It is submitted that this Court, in consideration of the experience gleaned from subsequent litigation, should reevaluate the wisdom of its decision in *Buffalo Forge* and clarify its intended dimensions, and that the instant case appropriately raises the issues and concerns for that reevaluation.

Forge," 45 Geo. Wash. L. Rev. 633 (1977); Comment, "Labor Law—Availability of Injunctive Relief to Restrain Sympathy Strikes," 43 Mo. L. Rev. 503 (1978); Smith, "The Supreme Court, Boys Markets Labor Injunctions and Sympathy Work Stoppages," 44 U. Chi. L. Rev. 321 (1977). *Contra*, Freed, "Injunctions Against Sympathy Strikes: In Defense of Buffalo Forge," 54 N. Y. U. L. Rev. 289 (1979).

[8] *See, e.g., Waller Brothers Stone Co.* v. *Steelworkers*, 620 F.2d 132 (6th Cir. 1980), where the appellate court reversed the district court on the basis of the latter's interpretation of language in a collective bargaining agreement which, according to the district court, showed that the dispute causing that strike was arbitrable. *See also Complete Auto Transit, Inc.* v. *Reis*, 614 F.2d 1110 (6th Cir. 1980); *Design and Manufacturing Corp.* v. *Auto Workers Local 2042*, 608 F.2d 767 (7th Cir. 1979).

CONCLUSION

For the foregoing reasons, Petitioners pray that a Writ of Certiorari be issued to review the judgment and decision of the United States Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

WAYNE S. BISHOP
THOMAS P. GIES
JEAN C. VANNESS
SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
1111 19th Street, N.W.
Washington, D.C. 20036
(202) 463-2400

Attorneys for Petitioners Jacksonville Bulk Terminals, et al.

Of Counsel

KENNETH A. MCGAW
Post Office Box 4289
Houston, Texas 77210

Dated: December 24, 1980

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Nos. 80-3111, 80-5089

NEW ORLEANS STEAMSHIP ASSOCIATION, a corporation, and TTT STEVEDORES OF LOUISIANA, INC., a corporation,

Plaintiffs-Appellees,

v.

GENERAL LONGSHORE WORKERS, ILA LOCAL UNION NO. 1418, ETC., *et al.*,

Defendants-Appellants.

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION AND OCCIDENTAL PETROLEUM COMPANY,

Plaintiffs-Appellees,

v.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, *et al.*,

Defendants-Appellants.

Sept. 25, 1980

Appeal from the United States District Court for the Middle District of Florida

---

Before RUBIN, HENDERSON and REAVLEY, Circuit Judges.

ALVIN B. RUBIN, Circuit Judge:

Unions and their members expressed their political views by refusing to load cargo aboard ships bound for a foreign nation whose actions they wished to condemn. Each union had a collective bargaining agreement with an American firm forbidding work stoppages and requiring the arbitration of disputes. Following the national labor policy determined by Congress, we conclude that a federal district court may by injunction enforce an arbitration award holding such a work stoppage invalid as violating the collective bargaining agreement but that it may not enjoin the union's action pending arbitration or extend an arbitrator's decree to apply to future cases no matter how similar they may appear likely to be. We also conclude that such an injunction does not violate the first amendment rights of the union and its members or impose involuntary servitude on them.

I.

On January 4, 1980, the President of the United States stated that, because of the Soviet Union's invasion of Afghanistan, he had decided "to halt or reduce exports" of grain to the Soviet Union. Pursuant to the authority given him by the Export Administration Act, 50 U.S.C.App. § 2401, *et seq.* (1979), he later issued directives that implemented an embargo against grain shipments to the Soviet Union, but he excluded from it the outstanding amount of unshipped grain committed under a 1975 agreement between the United States and the Soviet Union on the supply of grain. Imports were not affected.

Shortly thereafter, in his own response to the invasion of Afghanistan by the Soviet Union and what he perceived as a threat to world peace and the security of the United States, the International President of the Inter-

national Longshoremen's Association (ILA), Thomas U. Gleason, announced that he was instructing all ILA local unions on the Atlantic and Gulf Coasts to boycott all shipments to the Soviet Union of any materials including grain. The ILA also adopted a resolution that its members would not handle any cargo bound to or coming from the Soviet Union. The ILA boycott was, therefore, broader than the Presidential directive and prevented not only the loading of grain and other cargo licensed for export and exempted from or not covered by the Presidential embargo but also the unloading of cargo arriving from Russia. The resolution was adopted to express the conscience of union workers against contributing to the economic or military well-being of a nation that they considered a serious threat to their own country. It was not motivated by any hope for economic gain or by any dispute with any employer members, but was purely a political protest. No action was sought from the employers of union members and nothing that these employers might do could have eliminated the cause of the boycott.

The motor vessel JULIA L arrived at the Continental Grain elevator in Westwego, Louisiana, which is near New Orleans, in the latter part of January. Continental obtained an export license from the Department of Commerce for 177,000 bushels of corn to be shipped to Russia. Continental then hired TTT Stevedores to load the corn upon the M/V JULIA L. TTT Stevedores and a number of other firms who employ longshoremen are members of the New Orleans Steamship Association (NOSSA) and are parties to the collective bargaining agreements between NOSSA and the several ILA locals whose members work in the Port of New Orleans.

On January 23, TTT Stevedores attempted to hire the necessary gang under the terms of the 1977-80 Deep-Sea Agreement between NOSSA and Longshore Workers ILA Local Unions Nos. 1418 and 1419; a clerk under the

terms of a separate 1977-80 Agreement between NOSSA and Clerks and Checkers Local No. 1497 of the ILA; and a waterboy under the terms of yet another contract, the 1977-80 Deep-Sea Agreement between NOSSA and the Sack-Sewers, Sweepers, Waterboys and Coopers Union, ILA Locals No. 1683 and 1802. Each of the ILA locals refused to load grain aboard the JULIA L because the vessel was bound for the Soviet Union.

Each of the three collective bargaining agreements contains an identical no-strike clause and each contains a clause, identical in substance, requiring that all contractual grievances and disputes be submitted to arbitration.[1] Therefore, NOSSA and TTT Stevedores invoked procedures for expedited arbitration under each of the three collective bargaining agreements, charging that the work stoppage on the M/V JULIA L violated the unions' "no-strike" commitment. Three separate arbitration proceedings were convened. The grieving parties demanded

---

[1] In pertinent part, the language is as follows:

"(a) *No Strikes—No Lockouts*

There shall be no strikes, work stoppages, nor shall there be any lockouts.

(b) *Disputes Procedure and Arbitration*

The parties accept the principle that any dispute involving the interpretation or application of the terms of this agreement shall be resolved in an orderly and expeditious manner. They commit themselves to the procedure outlined below . . . and failure to deal with disputes under this disputes procedure shall constitute a violation of this agreement.

(c) These steps shall be followed to insure prompt resolution of disputes.

* * * *

The arbitrator's authority shall be limited to interpretation and application of the terms of this agreement . . . . The arbitrator shall have no authority to render decisions which have the effect of adding to, subtracting from, or otherwise modifying the terms of this Agreement."

"cease and desist" orders from each of the three arbitrators directing that the local unions:

> ". . . cease and desist from engaging in any strike or work stoppage in connection with the loading or unloading of cargo aboard the motor vessel JULIA L at the Westwego Continental Grain Elevator, *or from engaging in any other strikes or work stoppages in connection with loading or unloading Russian vessels and/or Russian cargo* . . . . (Emphasis added.)

Following an initial postponement of two days at the unions' request, a separate arbitration hearing under each agreement was held on January 26, 1980, one by Arbitrator John F. Caraway, another by Arbitrator John J. Maxwell and the third by Arbitrator John J. McAulay. The unions did not participate in the hearings except to make an initial appearance for the purpose of submitting a written statement to the arbitrators. NOSSA and TTT Stevedores submitted evidence at each hearing.

Each arbitrator issued a separate award. Each of them found that the ILA boycott of exempt Russian grain violated the no-strike clause in each contract. Each arbitrator issued a "cease and desist" order, but the orders differed in their terms.

The arbitrator appointed under NOSSA's Deep-Sea agreement with the Sack-Sewers, John J. McAulay, made his order applicable to ". . . any work stoppage in violation of the Deep-Sea contract . . . with reference to grain or other cargo having a U.S. Export License . . . ." The arbitrator appointed under the General Longshore Workers Agreement, John F. Caraway, and the arbitrator appointed under the Clerks Agreement, John J. Maxwell, required the locals involved only to cease from strikes and work stoppages in connection with the loading or unloading of exempt grain aboard the JULIA L.

When the various ILA locals continued to refuse to load grain aboard the JULIA L, NOSSA and TTT Stevedores sought an injunction to enforce the arbitration awards. Following the conclusion of a hearing the district judge ordered that the arbitration awards be enforced and that the defendants be preliminarily enjoined from engaging in, inducing or in any way encouraging any work stoppage in connection with the loading or unloading of grain destined for the Soviet Union under U.S. Export License. Thus the order went beyond the terms of the awards made by Arbitrators Caraway and Maxwell.

The Jacksonville Bulk Terminals (JBT) suit arises out of the same international events. Members of Local 1408, ILA, are employed by JBT which maintains a bulk marine shipping terminal in the Port of Jacksonville, Florida. JBT is a party to the collective bargaining agreement between the Jacksonville Maritime Association and Locals 1408, 1408-A, and 1593 of the ILA.

JBT is engaged in the loading of superphosphoric acid (SPA) onto ships destined for the Soviet Union from the Port of Jacksonville. SPA was not included in the Presidential embargo of January 4.

On January 15, 1980, a Norwegian vessel entered the Jacksonville port to take on SPA for transport to the Soviet Union. Pursuant to the national ILA resolution, the members of Local 1408 refused to handle the cargo. At no time did Local 1408 refuse to handle any other cargo.

The collective bargaining agreement between JBT and Local 1408 contains a no-strike clause[2] and an arbitra-

---

[2] The clause reads:

> During the term of this agreement the employer agrees that there shall be no lockout of the members of the Union, and

tion clause.[3] JBT sought to compel arbitration with the union. Pending arbitration it sought a temporary restraining order and preliminary injunction to halt the boycott. The district court, denying the union the opportunity to express what the judge termed its "legitimate outrage in this singular manner," ordered the union to process its grievance in accordance with the contractual grievance procedure and enjoined it from refusing to work aboard the three ships then in port.

Shortly after the injunction was issued, the JULIA L was loaded with grain and departed from New Orleans. The three Norwegian vessels were loaded with SPA and left Jacksonville. Thereafter, effective February 4, 1980, the International Trade Administration of the Department of Commerce changed the regulations governing the export of certain commodities, including phosphoric acid, and now requires the issuance of validated licenses before such commodities can be exported. Simultaneously, new licensing was suspended. 45 Fed. Reg. 8293 (Feb. 7, 1980). On February 25, the President extended the trade

---

the Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the employer's operation for any cause whatsoever.

[3] Paragraph 15B of the Agreement provides, "Matters under dispute which cannot be promptly settled between the Local and an individual Employer" shall be referred to arbitration.

Paragraph 15F of the contract provides:

The Union agrees that this Agreement is intended to cover all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the Employers will not be required to negotiate on any further matters affecting these or other subjects not specifically set forth in this Agreement. Anything not contained in this Agreement shall not be construed as being part of this Agreement.

embargo with the Soviet Union to include SPA and other phosphates.

The unions, appealing both injunctions, contend that the cases are, nonetheless, not moot, that the first amendment protects each union and its members from an injunction requiring them to abandon an effort to express their political views and that each injunction was improperly granted on other grounds. Some issues are common to both appeals; some are different in each, but all are governed by the same principles. We, therefore, consolidated the appeals and will consider them in this one opinion.

II.

The constitution limits the jurisdiction of federal courts to "cases or controversies." Art. III, § 2, United States Constitution. If, as a result of events that have occurred after a suit has started, even while it is on appeal, the litigants no longer have an actual dispute, the case is said to be moot, to present a question of academic interest rather than of decision of the rights of the parties. A case thus mooted is not a controversy within the meaning of the Constitution. *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 84 S.Ct. 391, 11 L.Ed.2d 347 (1964); Note, The Mootness Doctrine in the Supreme Court, 88 Harv. L. Rev. 373, 378 (1974). While the record is not entirely clear, it appears that some licensed grain is still being exported to the Soviet Union and that, therefore, to the extent the injunction issued by the district court for the Eastern District of Louisiana prohibits interference with loading that grain, the real controversy continues.[4] While the record is unclear concerning SPA,

---

[4] In *Philadelphia Marine Trade Ass'n* v. *ILA, Local 1291*, 365 F.2d 295 (3rd Cir. 1966), *rev'd on other grounds*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967), the case was held not moot where the arbitration award extended to future violations of the collective bargaining agreement and the district court retained jurisdiction

statements made at oral argument indicate that some is still being loaded for shipment to the Soviet Union. We need not remand, however, for a factual determination in this respect because we find jurisdiction on another basis.

In some instances, despite the fact that the immediate dispute has been resolved, it may still be appropriate for a court to consider the litigation. *See* G. Gunther, Cases and Materials on Constitutional Law 1573 (9th ed. 1975). If it is probable that similar cases will arise in the same fashion in the future and the underlying dispute will, as a result of similar occurrences, evade judicial review, there is a sufficient case to satisfy the constitutional requirement. *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310 (1911); *Roe* v. *Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973). However, if the case is not presented as a class action, mootness can be avoided only if the challenged action is in duration too short to be litigated fully prior to its cessation or expiration and there is a reasonable expectation that the same complaining party would again be subjected to the same action. *Weinstein* v. *Bradford*, 423 U.S. 147, 149, 96 S.Ct. 347, 349, 46 L.Ed.2d 350 (1975); *Sosna* v. *Iowa*, 419 U.S. 393, 95 S.Ct. 553, 42 L.Ed.2d 532 (1975).

The loading or unloading of a vessel requires but a day or two. If an injunction is issued against loading or unloading, unless this court grants a stay order, the vessel will have departed before an appellate court can review the injunction. Thus, the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration.

---

to enforce the award against any subsequent violation after the current work stoppage ceased. The award of Arbitrator McAulay in the NOSSA suit is similarly applicable to subsequent disputes.

Unlike the situation in *General Electric Co.* v. *Local Union 191*, 443 F.2d 608, 610 (5th Cir. 1971), *vacated and remanded*, 398 U.S. 436, 90 S.Ct. 1883, 26 L.Ed.2d 384 (1970), where we found "no possibility of a recurrence of strikes" and the contract had expired, in the instant case there is a real possibility of the recurrence of work stoppages absent judicial intervention. Therefore, the second part of the jurisdictional test is satisfied: there is a reasonable expectation that the same complaining party will be subjected to the same action again.

The policy of the ILA continues. The Soviet Union's troops remain in Afghanistan. Unless we review the injunctions now, the controversy is capable of repetition in a fashion that would again evade review.

III.

The first amendment is absolute in terms: Congress shall make no law abridging the freedom of speech. Its protection extends to labor union activities. *Thomas* v. *Collins*, 323 U.S. 516, 65 S.Ct. 315, 89 L.Ed. 430 (1945); *Thornhill* v. *Alabama*, 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 (1940). The first amendment shields not only verbal and written messages, purely communicative, but also conduct designed to express and convey ideas. *See, e.g.*, *Tinker* v. *Des Moines Independent Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731 (1969); *See* Nimmer, The Meaning of Symbolic Speech Under the First Amendment, 21 U.C.L.A. L. Rev. 29 (1973). It prohibits not only statutory abridgment but all governmental action including judicial action that restrains free expression. *See New York Times Co.* v. *Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *American Federation of Labor* v. *Swing*, 312 U.S. 321, 61 S.Ct. 568, 85 L.Ed. 855 (1941).

The Supreme Court has frequently distinguished between "pure speech" and what it has labelled "speech-

plus"—expressive conduct arousing action. *See, e.g., Cox* v. *Louisiana* (Cox II), 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 (1965); *Teamsters Local 695* v. *Vogt, Inc.*, 354 U.S. 284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957); *Bakery & Pastry Drivers Local 802* v. *Wohl*, 315 U.S. 769, 776-77, 62 S.Ct. 816, 819-20, 86 L.Ed. 1178 (1942).[8]

While "pure speech" is seldom subject to any governmental action, "speech-plus," the Supreme Court has held, is subject to governmental regulation, and even perhaps restraint, when the action is warranted by a compelling government interest. *United States* v. *O'Brien*, 391 U.S. 367, 376-77, 88 S.Ct. 1673, 1678-79, 20 L.Ed.2d 672 (1968); *Adderly* v. *Florida*, 385 U.S. 39, 48 n.7, 87 S.Ct. 242, 247 n.7, 17 L.Ed.2d 149 (1967); *Cox* v. *Louisiana* (Cox II), 379 U.S. 559, 563, 85 S.Ct. 476, 480, 13 L.Ed. 2d 487 (1965). *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571-72, 62 S.Ct. 766, 768-69, 86 L.Ed. 1031 (1942) ("fighting words"); *Schenck* v. *United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470 (1919) ("clear and present danger that they will bring about the substantive evils that Congress has a right to prevent"); *Wood* v. *Georgia*, 370 U.S. 375, 383-85, 82 S.Ct. 1364, 1369-70, 8 L.Ed.2d 569 (1962); *Dennis* v. *United States*, 341 U.S. 494, 503-10, 71 S.Ct. 857, 864-68, 95 L.Ed. 1137 (1951).

Just as the states may regulate labor relations, at least in areas not preempted by federal action, and enjoin peaceful picketing aimed at preventing effectuation of the state's policy, *Giboney* v. *Empire Storage & Ice Co.*, 336 U.S. 490, 69 S.Ct. 684, 93 L.Ed. 834 (1949), the Congress may regulate labor relations affecting interstate commerce and the federal courts may implement congressional policy by enjoining action that obstructs

---

[8] The distinction has been criticized as having "no real content" because all communication involves conduct. L. Tribe, American Constitutional Law 599 *et seq.* (1978).

it,[6] *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). *See Retail Clerks, Local 1625* v. *Schermerhorn*, 375 U.S. 96, 84 S.Ct. 219, 11 L.Ed.2d 179 (1963); *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962); *Railway Employees' Department* v. *Hanson*, 351 U.S. 225, 76 S.Ct. 714, 100 L.Ed. 1112 (1956). Thus, an injunction against picketing or threats in violation of the "secondary boycott" provisions of the Labor Management Relations Act, 29 U.S.C. § 158(b)(4), is not proscribed. *Electrical Workers, Local 501* v. *N.L.R.B.*, 341 U.S. 694, 705, 71 S.Ct. 954, 960, 95 L.Ed. 1299 (1951); *Burr* v. *N.L.R.B.*, 321 F.2d 612 (5th Cir. 1963); *N.L.R.B.* v. *Local Union No. 3, Electrical Workers*, 477 F.2d 260 (2d Cir. 1973), *cert. denied*, 414 U.S. 1065, 94 S.Ct. 572, 38 L.Ed.2d 470 (1973). We have, prior to the decision in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022 (1976), ordered arbitration of a labor dispute and enjoined a strike pending arbitration. *West Gulf Maritime Ass'n* v. *I.L.A.*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd* 531 F.2d 574 (5th Cir. 1976). *See also Hughes* v. *Superior Court*, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985 (1950); *Colonial Sand & Stone Co.* v. *Geoghegan*, 367 F.Supp. 932 (S.D.N.Y. 1973).

The first amendment "does not protect behavior made unlawful by legitimate legislation or regulation, enacted for purposes unrelated to the suppression of free expression." *Bullock* v. *Mumford*, 509 F.2d 384, 387 (D.C. Cir. 1974); *American Radio Ass'n* v. *Mobile Steamship Ass'n*, 419 U.S. 215, 228-32, 95 S.Ct. 409, 417-419, 42 L.Ed.2d 399 (1974); *Teamsters Local 695* v. *Vogt, Inc.*, 354 U.S.

---

[6] Because we are here discussing constitutional power, we do not pause to consider statutory restrictions on the judiciary such as those imposed by the Norris-LaGuardia Act, 29 U.S.C. § 104. We will, however, hereafter consider the effect of that statute on court action.

284, 77 S.Ct. 1166, 1 L.Ed.2d 1347 (1957); *Carpenters & Joiners Union Local 213* v. *Ritter's Cafe*, 315 U.S. 722, 62 S.Ct. 807, 86 L.Ed. 1143 (1942). The work stoppage occasioned only by words is not to be distinguished from one occasioned by a picket line.

The argument that the injunctions against the refusal to work ships is a "prior restraint" on speech does not withstand analysis. Neither President Gleason nor any other ILA officer or member is enjoined from speaking. They are enjoined simply from continuing a work stoppage already commenced in the NOSSA case and threatened in the JBT case.

The court's order prohibits only a concerted work stoppage, and cannot be construed as an edict requiring an individual to perform personal services. An employee remains free to quit his employment at any time. The argument that the district court injunction enforced a promise to render personal services has, therefore, been rejected on numerous occasions by the Supreme Court. *See, e.g., UAW Local 232* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, 251, 69 S.Ct. 516, 520, 93 L.Ed. 651 (1949) *overruled on other grounds, Lodge 76, International Ass'n of Machinists* v. *Wisconsin Employment Relations Board*, 427 U.S. 132, 96 S.Ct. 2548, 49 L.Ed.2d 396 (1976). *See also N.L.R.B.* v. *Local 74, Carpenters & Joiners*, 181 F.2d 126, 132 (6th Cir. 1950), *aff'd*, 341 U.S. 707, 71 S.Ct. 966, 95 L.Ed. 1309 (1951); *N.L.R.B.* v. *National Maritime Union*, 175 F.2d 686, 692 (2d Cir. 1949), *cert. denied*, 338 U.S. 954, 70 S.Ct. 492, 94 L.Ed. 1348 (1950). We conclude that neither the first nor the thirteenth amendment was violated by either injunction.

IV.

In the absence of constitutional restraint, the propriety of issuance of an injunction must be evaluated in the light of conflicting national policies, expressed in stat-

utes: on the one hand, the federal statute forbidding the issuance of injunctions in labor disputes and, on the other, those enactments favoring the resolution of such differences by arbitration.

A.

The Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, was adopted in 1932 to curb federal courts in their use of injunctions against strikes and other economic weapons in labor disputes.[7] Section 4(a) of the Act, 29 U.S.C. § 104(a) reads:

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction *in any case involving or growing out of any labor dispute* to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> (a) Ceasing or refusing to perform any work or to remain in any relation of employment. (Emphasis added.)

Thus Norris-LaGuardia is limited to cases "involving or growing out of" a "labor dispute." Section 13(c) of the

---

[7] *See* Note, *Buffalo Forge Co.* v. *United Steelworkers*: The Supreme Court Sanctions Sympathy Strikes, 25 Clev.St.L.Rev. 435 (1976). Congress intended to take the federal courts out of the "labor injunction business." *Marine Cooks & Stewards* v. *Panama S.S. Co.*, 362 U.S. 365, 369, 80 S.Ct. 779, 783, 4 L.Ed.2d 797 (1960); S. Rep. No. 163, 72d Cong., 1st Sess 7-8 (1932); H.R. Rep. No. 669, 72d Cong., 1st Sess. 2-3 (1932); 75 Cong. Rec. 5464, 5467, 5478 (1932). *See* F. Frankfurter & N. Greene, The Labor Injunction 24-46, 131-33, 200-02 (1930). *See also* A. Cox, D. Bok, R. Gorman, Cases on Labor Law 60 (8th ed 1977); O. Fiss, Injunctions 580-612 (1972); Statutory History of the United States: Labor Organizations 161-247 (R. Koretz ed. 1970).

Act, 29 U.S.C. § 113(c), defines "labor dispute" as follows:

> (c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

A panel of this court in 1975 held that a strike to achieve a political goal is a labor dispute within the meaning of the Norris-LaGuardia Act. *United States Steel Corp.* v. *United Mine Workers*, 519 F.2d 1236 (5th Cir. 1975), *rehearing denied*, 526 F.2d 376 (1976), *cert. denied*, 428 U.S. 910, 96 S.Ct. 3221, 49 L.Ed.2d 1217 (1976).[8] The strike was aimed "at the national policy of this country's permitting the importation of South African coal." 519 F.2d at 1247. The panel found that an injunction issued by the district court violated Section 9 of the Norris-LaGuardia Act, 29 U.S.C. § 109, which, like § 4 of the Act, applies only in cases "involving or growing out of a labor dispute."

That decision was rendered on September 24, 1975, after oral argument, and submission. Shortly thereafter, another panel of this court considered a similar problem and reached an apparently inconsistent decision. In *West Gulf Maritime Ass'n* v. *ILA*, 413 F.Supp. 372 (S.D. Tex. 1975), *aff'd summarily*, 531 F.2d 574 (5th Cir. 1976),

---

[8] The Supreme Court in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022 (1976) cited this court's decision in *United States Steel Corp.* as "in accord" with the Second Circuit decision affirmed by the Supreme Court in *Buffalo Forge*. 428 U.S. at 404 n.9, 96 S.Ct. at 3146 n.9, 49 L.Ed.2d at 1028 n.9.

the union, in violation of a no-strike agreement, had refused to load grain on a ship bound for the Soviet Union until the president of ILA was satisfied that the interests of the American public were adequately protected. Noting that the underlying dispute involved a political issue, the district court found there was no labor dispute and held Section 4 of the Norris-LaGuardia Act inapplicable. *Accord, Harrington & Co.* v. *ILA, Local 1416*, 356 F.Supp 1079 (S.D. Fla. 1973); *Khedivial Line, SAE* v. *Seafarers' International Union*, 278 F.2d 49 (2nd Cir. 1960). *Cf. NLRB* v. *International Longshoremen's Ass'n (Ocean Shipping)*, 332 F.2d 992 (4th Cir. 1964) (politically-motivated boycott held not a labor dispute within the meaning of the Labor Management Relations Act). The decision was affirmed summarily without an opinion and, so far as we can determine, without the members of the panel of this court being aware of the *United States Steel Corp.* decision. The possibility of such a regrettable occurrence appears to lurk continually in the proceedings of a multi-panel court for it is difficult to devise a process that will expose the similarity of issues in pending cases before decisions are published.

We find it difficult satisfactorily to reconcile these decisions. To the extent that they are inconsistent, we consider the rationale of *United States Steel Corp.* to be more persuasive. Moreover, it was decided after oral argument and by a written opinion while there was but a summary affirmance in *West Gulf Maritime.* Adhering to the earlier and more fully expressed opinion, we find that a strike called to further the political goals of the union does "involve or grow out of any labor dispute" for purposes of the Norris-LaGuardia Act.[9]

---

[9] Whether a dispute involving a political question is "in commerce" within the meaning of the provisions of the Labor Management Relations Act (LMRA) regulating secondary boycotts is a different question, which we consider separately in the cases of

B.

A few years after the adoption of the Norris-LaGuardia Act Congress fostered collective bargaining by enacting the Wagner Act, the National Labor Relations Act of 1935. In 1947, it modified national labor policy by enacting the Taft-Hartley Act, the Labor Management Relations Act of 1947.

National policy, embodied in the National Labor Relations Act, as thus amended June 23, 1947, 29 U.S.C. § 173(d), favors the orderly resolution of labor-management grievances through arbitration. *United Steelworkers* v. *American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

Moreover, the Labor Management Relations Act (LMRA) authorizes federal courts to entertain suits to enforce collective bargaining agreements. Section 301(a), 29 U.S.C. § 185(a). These provisions, in combination,

---

Baldovin v. *International Longshoremen's Ass'n*, —— F.2d —— (5 Cir.) and *Mack* v. *International Longshoremen's Ass'n*, —— F.2d —— (5 Cir.) decided by us today. Although the LMRA reaches activities "in commerce" to the full extent of the Congressional power under the commerce clause, *NLRB* v. *Reliance Fuel Oil Corp.*, 371 U.S. 224, 83 S.Ct. 312, 9 L.Ed.2d 279 (1963), a labor dispute does not automatically come within the jurisdictional confines of the Act. *Windward Shipping (London) Ltd.* v. *American Radio Ass'n*, 415 U.S. 104, 94 S.Ct. 959, 39 L.Ed.2d 195 (1974). Whether an activity constitutes a labor dispute is an inquiry separate and distinct from the effect of that activity on commerce. "The National Labor Relations Act does not extend to all industries and all employees. It is only applicable to those employments in which strikes and labor disputes would affect interstate commerce . . . ." *Alabama State Federation of Labor, Local No. 103* v. *McAdory*, 325 U.S. 450, 464, 65 S.Ct. 1384, 1391, 89 L.Ed. 1725 (1945).

created the basis for suits to enforce arbitration agreements by injunction. However, Congress did not repeal the Norris-LaGuardia Act ban on injunctions, considering and rejecting a proposal to do so.[10]

The anti-injunction policy of the Norris-LaGuardia Act is not an impediment to specific performance of the promise to arbitrate. The Supreme Court has, since *Textile Workers Union* v. *Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957), consistently upheld the validity of orders compelling the arbitration of a labor dispute. *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 94 S.Ct. 629, 38 L.Ed.2d 583 (1974); *Nolde Brothers, Inc.* v. *Local No. 358, Bakery Workers Union*, 430 U.S. 243, 97 S.Ct. 1067, 51 L.Ed.2d 300 (1977). However, these cases do not involve the power of a court to enjoin a strike pending the arbitration of the dispute.

Moreover, because of the national labor policy in support of agreed upon dispute-settlement procedures, an injunction may issue to prevent the violation of an arbitration award, once rendered. Such an injunction is deemed authorized by the LMRA of 1947, limiting the reach of the Norris-LaGuardia anti-injunction policy. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960); *International Ass'n of Machinists, District 776* v. *Texas Steel Co.*, 538 F.2d 1116 (5th Cir. 1976); *Pacific Mari-*

---

[10] "In the course of enacting the Taft-Hartley Act, Congress rejected the proposal that the Norris-LaGuardia Act's prohibition against labor-dispute injunctions be lifted to the extent necessary to make injunctive remedies available in federal courts for the purpose of enforcing collective-bargaining agreements." *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 409, 96 S.Ct. 3141, 3148, 49 L.Ed.2d 1022 (1976). The relevant legislative history is discussed in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 205-09, 82 S.Ct. 1328, 1334-36, 8 L.Ed.2d 440 (1962).

time Ass'n v. *International Longshoremen's and Warehousemen's Union*, 517 F.2d 1158 (9th Cir. 1975); *New Orleans Steamship Ass'n* v. *General Longshoreworkers Local 1418*, 389 F.2d 369 (5th Cir. 1968), *cert. denied*, 393 U.S. 828, 89 S.Ct. 92, 21 L.Ed.2d 99 (1968); *Philadelphia Marine Trade Ass'n* v. *International Longshoremen's Ass'n, Local 1291*, 365 F.2d 295 (3rd Cir. 1966), *rev'd on other grounds*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967); *Pacific Maritime Ass'n* v. *International Longshoremen's and Warehousemen's Union*, 304 F.Supp. 1315 (N.D.Calif.1969), *aff'd on other grounds*, 454 F.2d 262 (9th Cir. 1971). As the Supreme Court pointed out in *Buffalo Forge*, "were the issue arbitrated and the strike found illegal, the relevant federal statutes as construed in our cases would permit an injunction to enforce the arbitral decision." 428 U.S. at 406, 96 S.Ct. at 3147, 49 L.Ed.2d 1022.

The latent conflict between the LMRA and Norris-LaGuardia when an injunction against a strike is sought pending arbitration was considered in *Sinclair Refining Co.* v. *Atkinson*, 370 U.S. 195, 82 S.Ct. 1328, 8 L.Ed.2d 440 (1965), reconsidered in *Boys Markets, Inc.* v. *Retail Clerks Union, Local 770*, 398 U.S. 235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970) and again reviewed in *Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. 397, 96 S.Ct. 3141, 49 L.Ed.2d 1022.[11] *See also* our review in *Jacksonville Maritime Ass'n* v. *International Longshoremen's Ass'n*, 571 F.2d 319 (5th Cir. 1978).

In *Boys Markets* the Supreme Court favored accommodation of the seemingly absolute terms of the Norris-LaGuardia Act and the policies of LMRA. Overruling its prior decision in *Sinclair Refining*, the court held that a federal court has power to enjoin a strike "over a griev-

---

[11] *See* Cohen, Strikes and Injunctions: The Buffalo Forge Case, 30 N.Y.U. Conf. Lab. 171 (1977).

ance which both parties are contractually bound to arbitrate" if the employer is "ordered to arbitrate, as a condition of his obtaining [the] injunction." 398 U.S. at 255, 90 S.Ct. at 1594, 26 L.Ed.2d at 212. *See Jacksonville Maritime Ass'n* v. *International Longshoremen's Ass'n*, 571 F.2d 319 (5th Cir. 1978). *Cf. Sea-Land Service, Inc.* v. *International Longshoremen's Ass'n*, 625 F.2d 38, (5th Cir. 1980) (*Boys Markets* injunction may not be issued pending ongoing NLRB proceedings).

The Supreme Court refined the criteria for issuance of a *Boys Markets* injunction in *Buffalo Forge*, which involved a sympathy strike by a union that had agreed to a no-strike clause in a collective bargaining agreement. The company sought to enjoin the strike pending arbitration of the issue whether the strike violated the contract. The Supreme Court's 5-4 decision noted: "The Union has gone on strike not by reason of any dispute it or any of its members has with the employer, but in support of other local unions . . . ." 428 U.S. at 404-05, 96 S.Ct. at 3146, 49 L.Ed.2d at 1029. "Whether the sympathy strike the Union called violated the no-strike clause, and the appropriate remedies if it did, are subject to the agreed-upon dispute-settlement procedures of the contracts and are ultimately issues for the arbitrator." 428 U.S. at 405, 96 S.Ct. at 3146, 49 L.Ed.2d at 1029. However, even though the strike might violate the no-strike provision of the contract and its validity be the subject of arbitration, the strike could not be enjoined if it "was not *over* any dispute between the Union and the employer" that was subject to the arbitration provisions of the contract, 428 U.S. at 407, 96 S.Ct. at 3148.[12]

---

[12] We had previously reached this same conclusion in *Amstar Corp.* v. *Meat Cutters*, 468 F.2d 1372 (5th Cir. 1972). *See Buffalo Forge Co.* v. *United Steelworkers*, 428 U.S. at 404 n.9, 96 S.Ct. at 3146 n.9.

Thus the crucial distinction is whether arbitration would resolve the dispute that led to the strike. Reviewing this line of Supreme Court decisions in *Jacksonville Maritime*, we upheld the issuance of an anti-strike injunction where "(1) the strike [breaches] a no-strike obligation under an effective collective bargaining agreement; (2) the strike [is] over an arbitrable grievance; *and* (3) both parties [are] contractually bound to arbitrate the underlying grievance caused by the strike." 571 F.2d at 323. These continue to be the prerequisites.

V.

In one of the consolidated appeals presently before this court, the *Jacksonville Bulk Terminals* case, the district court issued a prearbitration injunction restraining the union's work stoppage as to shipments of cargo to Russia aboard three vessels. Since we have already determined that the strikes in the instant cases, aimed at effectuating the political goals of the union, "involve or grow out of" a labor dispute, the injunction is invalid under Section 4 of Norris-LaGuardia unless it complies with the limited *Boys Markets* exception.

The injunction fails to meet the second requisite for a *Boys Markets* injunction as articulated by this Court in *Jacksonville Maritime*: no arbiter could resolve the grievance between the ILA and the Soviet Union. The union's grievance is not, as asserted by JBT, a complaint against JBT doing business with the Soviets. It is a complaint against the actions of the U.S.S.R. itself. The union seeks to deny the Soviets the benefit of the labor of its members so long as that nation is engaged in what the union considers aggression. Unfortunately, no arbitrator can tell the Soviets to withdraw from Afghanistan.

The Florida district court's judgment ordered the union to process any grievance over the shipment of cargo

to the Soviet Union aboard the three vessels in accordance with the procedure contained in the arbitration clause of the contract. But an order to compel arbitration may issue only if the dispute is arbitrable. Arbitrability is a question for the court to pass on in the first instance. *Mobile Oil Corp.* v. *Local 8-766, Oil, Chemical & Atomic Workers*, 600 F.2d 322, 324 (1st Cir. 1979); *Local Union No. 787; Electrical, Radio & Machine Workers* v. *Collins Radio Co.*, 317 F.2d 214, 216 (5th Cir. 1963). While the question whether the strike itself violated the parties' agreement is arbitrable, the underlying dispute between the ILA and the Soviet Union is not. To the extent that the Florida judgment compels the parties to submit the former question to arbitration, it is affirmed; to the extent it demands arbitration of the underlying dispute it goes beyond the court's power and is vacated.

The Union suggests that the New Orleans arbitrators went beyond their authority. Judicial deference to arbitration does not, of course, grant carte blanche aproval to any decision an arbitrator might make. *Machinists, Local 2003* v. *Hayes Corp.*, 296 F.2d 238, 243 (5th Cir. 1961), *aff'd on rehearing*, 316 F.2d 90 (5th Cir. 1963). The arbitrator's authority is circumscribed by the arbitration agreement, and he can bind the parties only on issues that they have agreed to submit to him. Whether an arbitrator has exceeded these bounds is an issue for judicial resolution. *Torrington Co.* v. *Metal Products Workers, Local 1645*, 362 F.2d 677, 680 (2nd Cir. 1966). The award is not, however, tested by judicial review of the legal principles applicable or the application of some sort of clearly erroneous test to the findings of the fact. The award need only draw its essence from the collective bargaining agreement. *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. 593, 597, 80 S.Ct. 1358, 1361, 4 L.Ed.2d 1424, 1428; *Safeway Stores* v. *American Bakery & Confectionary Workers*, 390 F.2d 79, 81 (5th Cir. 1968). We find each

of the arbitrator's awards here sufficiently nurtured by the no-strike clause of the contract and it does not sap their essence that the underlying dispute was not itself arbitrable. A union may agree not to strike over any issue, arbitrable or not. Whether in this case it did was a question for the arbiters.

Insofar as the decision of the district court for the Eastern District of Louisiana granted an injunction to prevent violation of the arbitration awards actually made, it is affirmed. However, arbitrators' decisions can only be enforced as written. "It is the arbitrator's construction which was bargained for; . . . the courts have no business overruling him because their interpretation of the contract is different from his." *United Steelworkers* v. *Enterprise Wheel & Car Corp.*, 363 U.S. at 599, 80 S.Ct. at 1362, 4 L.Ed.2d at 1429. *International Ass'n of Machinists* v. *Modern Air Transport, Inc.*, 495 F.2d 1241 (5th Cir. 1974); *San Antonio Newspaper Guild Local No. 25* v. *San Antonio Light Division*, 481 F.2d 821 (5th Cir. 1973).

Arbitration is a dispute-settlement procedure that is a part of the collective bargaining process. *Piggly Wiggly Operators' Warehouses, Inc.* v. *Piggly Wiggly Operators' Warehouse Independent Truck Drivers Union, Local No. 1*, 611 F.2d 580 (5th Cir. 1980). It is not a judicial forum. Whether there is a "law of the contract" between the parties once an arbitrator decides an issue and what effect, if any, is to be given precedent are not primarily, if at all, questions for judicial resolution.

The Louisiana district court's judgment does more than merely enforce the awards as written: it applies the arbitration award of arbitrators Caraway and Maxwell, carefully limited by them to one vessel, to other vessels that may hereafter arrive at the Port of New Orleans. In this regard it enjoins future strikes over underlying grievances not subject to arbitration and makes the arbitrator's award

pecedential.[13] Whether the award can be given an effect akin to res judicata or stare decisis with regard to future disputes that may arise between the parties, neither the district court nor this court should decide. If the parties do not agree, that issue itself is a proper subject for arbitration.

Accordingly, the New Orleans injunction must be limited to restraint of strikes that violate the specific arbitration awards as rendered. This, of course, means that the injunction against strikes by ILA locals 1683 and 1802 will be broader than the injunction against strikes by ILA locals 1418, 1419 and 1497. That is not a consequence of judicial inconsistency but of the operation of the three separate dispute settlement procedures in three separate contracts.

VI.

Subject to the limitations of the constitution, national labor policy is to be made by the Congress. It is for the legislature to determine whether boycotts or strikes are to be sanctioned, encouraged or prohibited, as well as whether injunctions are, or are not, an acceptable means of intervention. We conclude that the controlling statutes permit the use of an injunction to prohibit strikes in violation of an arbitrator's award, but disallow injunctive relief prior to arbitration to prevent work stoppages that result from grievances not resoluble by arbitration even though such work stoppages may violate a no-strike clause.

Accordingly, the preliminary injunction ordered by the judgment of the Middle District of Florida is VACATED.

---

[13] The district court cited *Pacific Maritime Ass'n* v. *International Longshoremen's and Warehousemen's Union*, 454 F.2d 262 (9th Cir. 1971) to support its decision to extend the awards of arbitrators Maxwell and Caraway to include all grain which has been issued a United States export license. That decision affirmed the issuance of an injunction against subsequent violations of an arbitrator's award. It did not involve an expansion by the court of the arbitrator's award, and it is, therefore, inapposite.

Insofar as that judgment ordered the parties to submit to arbitration the question whether the work stopage violated the no-strike clause, it is AFFIRMED. The case is REMANDED for further proceedings consistent with this opinion.

The judgment of the Eastern District of Louisiana is AFFIRMED insofar as it issues a preliminary injunction against ILA Locals 1683 and 1802 in accordance with the award of Arbitrator McAulay. The preliminary injunction against ILA Locals 1418, 1419 and 1497 based on the awards of Arbitrators Caraway and Maxwell, is VACATED and the case is REMANDED for further proceedings consistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 80-81-Civ-J-B

JACKSONVILLE BULK TERMINALS, INC., HOOKER CHEMICAL CORPORATION, and OCCIDENTAL PETROLEUM COMPANY,
Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, OR OF ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS,
Defendants.

PRELIMINARY INJUNCTION

For the reasons stated in the Opinion entered herein on this date, it is

ADJUDGED:

1. The defendants and their officers, agents, servants, representatives, members and employees and all those

individuals or entities in concert or participation with them who receive actual notice of this order are enjoined and restrained from calling, instigating, directing, encouraging, threatening, causing, assisting, or participating in any strike, slowdown, work stoppage, refusal to work as assigned, or any other interruption of JBT's terimnal operation relating to M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND because of any question, dispute, difference, complaint, or grievance concerning the shipment of cargo from JBT's Jacksonville terminal to the Soviet Union.

2. The defendants, their officers, agents, servants, representatives, members and employees and all those in concert or participation with them are enjoined and restrained from any action eliciting the support of other persons, including, without limitation, members and officials of the Masters, Mates and Pilots Association, in refusing to service the M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND carrying cargo to or from the Soviet Union or in any other way refusing to perform traditional and usual work performed by those persons related to the M/V BOW, SEA, M/V BOW ROGN, and M/V BOW LIND.

3. JBT and the defendants shall process any grievance(s) over the shipment of cargo to and from the Soviet Union on the M/V BOW SEA, M/V BOW ROGN, and M/V BOW LIND in accordance with the contractual grievance procedure contained in § 15(B) of the collective bargaining agreement.

4. This order shall become effective upon JBT's filing with the Clerk of this Court a good and sufficient bond in the penal amount of $2,500.00.

5. Should the President's order restricting trade with the Soviet Union be broadened to include superphosphoric acid, the Court will entertain a motion by any party to

dissolve this order immediately. Once a motion is filed, no party will be held in violation of this order until further order of the Court.

ORDERED at Jacksonville, Florida, this 1 day of February, 1980, at 9:00 A.M.

/s/ Susan H. Black
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 80-81-Civ-J-B

JACKSONVILLE BULK TERMINALS, INC.,
HOOKER CHEMICAL CORPORATION, and
OCCIDENTAL PETROLEUM COMPANY,
Plaintiffs,

vs.

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LOCAL UNION 1408, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION; LANDON WILLIAMS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; MELVIN ANDREWS, INDIVIDUALLY AND AS VICE-PRESIDENT OF LOCAL 1408; OLIVER COLLINS, INDIVIDUALLY AND AS TREASURER OF LOCAL 1408; PAUL FIELDS, INDIVIDUALLY AND AS BUSINESS AGENT OF LOCAL 1408; JOHN DOE AND ALL OTHER MEMBERS OF LOCAL 1408 OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, OR OF ANY OTHER LABOR ORGANIZATION ACTING IN CONCERT WITH THE NAMED DEFENDANTS,
Defendants.

OPINION

Plaintiffs, Jacksonville Bulk Terminals, Inc. ("JBT"), filed this action under § 301(a) of the Labor Management Relations Act, 29 U.S.C. 185(a), for Breach of a collective bargaining agreement, requesting a temporary restraining order and a preliminary and permanent injunction. Defendants agreed to waive the five days notice required by Local Rule 4.06(a), Rules of the United States District Court for the Middle District of

Florida, and a hearing was held on plaintiff's request for a preliminary injunction on January 31, 1980. By oral motion at this hearing, Hooker Chemical Corporation ("Hooker") and Occidental Petroleum Company ("Occidental") were added as additional plaintiffs. JBT, a subsidiary of Oxy Chemical Corp. ("OXY"), maintains a bulk marine shipping terminal at the Port of Jacksonville, Florida ("Jacksonville Terminal"), where it handles large amounts of superphosphoric acid ("SPA"). SPA, a phosphate-based chemical, is produced by Hooker Chemical Corporation ("Hooker"), the corporate parent of OXY, at Hooker's facility in White Springs, Florida. Seventy-five percent of the prosphate produced by Hooker at White Springs is shipped through JBT's Jacksonville Terminal to the Soviet Union pursuant to a twenty-year exchange agreement between the Soviet Union and plaintiff Occidental, Hooker's parent company.

Defendants include the International Longshoremen's Association ("ILA"), its local affiliate, Local 1408 ("Local"), and individual officers and members of the Local. At all pertinent times ILA and the Local have been the exclusive representatives of all longshoremen working at the Jacksonville Terminal. In October of 1977, ILA and the Local entered into a collective bargaining agreement ("agreement") with JBT. Paragraph 15(A) of this agreement provides,

> 15. (A) During the terms of this Agreement, the Employer agrees that there shall be no lockouts of the members of the Union, and Union agrees that there shall not be any strike of any kind or degree whatsoever, walkout, suspension of work, curtailment or limitation of production, slowdown, or any other interruption or stoppage, total or partial, of the Employer's operation for any cause whatsoever . . . .

Paragraph 15(B) of the agreement provides that "matters under dispute" which cannot be resolved by the parties shall be referred to arbitration.

On January 4, 1980, the President of the United States announced certain restrictions on trade with the Soviet Union. No restrictions were placed on the shipment of SPA. Subsequently, ILA adopted a resolution announcing its refusal to load or unload any cargo bound to or from the Soviet Union. Since January 15, 1980, four ships have arrived in Jacksonville to load SPA for the Soviet Union. These shipments represent approximately $42,000,000. in revenues to Hooker. The Local, adhering to the policy established by ILA, has refused to load these ships because they are bound for the Soviet Union. One ship, the M/V BOW SUN, is presently being loaded with other cargo and is no longer relevant to this action. Plaintiffs claim that the refusal to load the remaining three ships, the M/V BOW SEA, the M/V BOW ROGN, and the M/V BOW LIND, plus others which may arrive, is a violation of the agreement. They seek injunctive relief.

The initial question the Court must consider is the applicability of § 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104(a).

> No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunctions in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:
>
> > (a) Ceasing or refusing to perform any work or to remain in any relation of employment.

By its terms this Act applies only to cases "involving or growing out of any *labor dispute.*" (emphasis added). Section 13(c) of the Act, 29 U.S.C. 113(c), defines "labor dispute."

> (c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the associaiton or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

Under this definition Courts generally have held that strikes to effectuate the political goals of the union do not "involve or grow out of any labor dispute." The case of *West Gulf Maritime* v. *I.L.A.*, 413 F. Supp. 372 (S.D. Tex. 1975), *aff'd*, 531 F.2d 574 (5th Cir. 1976), involved an almost identical question. In that case the union, in violation of a no strike agreement, had refused to load grain on a ship bound for the Soviet Union until the president of ILA was satisfied that the interests of the American public were adequately protected. Noting that the union was trying to argue a political issue, the court found there was no labor dispute and held § 4 of the Norris-LaGuardia Act inapplicable. *Accord*, *Harrington Co., Inc.* v. *I.L.A., Local 1416*, 356 F. Supp. 1079 (S.D. Fla. 1973); *Khedivial Line SAE* v. *Seafarer's Int. Union*, 278 F.2d 49 (2d Cir. 1960).

The underlying dispute in this case is clearly political. In fact, other than the work stoppage, there appears to be no dispute at all between plaintiffs and defendants. Defendants' underlying objections are not to the policies of their employer, but to the political policies of a foreign nation. Though both understandable and admirable, those objections do not involve or grow out of any labor dispute as that term is used in § 4 of the Norris-LaGuardia Act.

Therefore, the Court is not prohibited by the Norris-LaGuardia Act from granting the relief requested by plaintiffs.

After determining that the Norris-LaGuardia Act does not apply, the Court still must determine whether a preliminary injunction is appropriate under the traditional concepts of equity law. Thus the Court must evaluate (1) the likelihood of plaintiffs' success on the merits, (2) whether plaintiffs will suffer irreparable harm if the injunction does not issue, (3) the potential harm to defendants if the injunction is issued, and (4) the public interest.

(1) There is a substantial likelihood of plaintiffs' success on the merits. Defendants specifically agreed to forego the right to strike in return for a mandatory arbitration agreement. Such agreements are favored by federal labor policy. See 29 U.S.C. § 173(d); *Boys Market, Inc.* v. *Retail Clerks Union*, 398 U.S. 235, 26 L.Ed.2d 199, 90 S.Ct. 1583 (1973); *Gateway Coal Co.* v. *United Mine Workers*, 414 U.S. 368, 38 L.Ed.2d 583, 94 S.Ct. 629 (1974). There is a substantial likelihood that defendants' work stoppage will be found to be in violation of the agreement.

(2) Plaintiffs have also demonstrated that they will suffer irreparable harm if the injunction does not issue. In addition to the loss of revenues from sales and extra costs incurred, the strike has jeopardized the long-term exchange agreement between Occidental and the Soviet Union. Seventy-five percent of the phosphate produced at Hooker's White Springs facility and a substantial portion of JBT's operations are directed toward this contract. In addition, Occidental would lose the substantial supply of ammonia, ureau and potash it receives in return. Such a drastic reallocation of markets and suppliers would inevitably result in irreparable harm.

(3) On the other hand, defendant will suffer no harm if the injunction is issued. At most they will be denied the opportunity to express their legitimate outrage in this singular manner. They specifically agreed to forego the opportunity to use this means of expression. Defendants will be required only to submit their grievances to a neutral arbitrator as they previously have agreed.

(4) Perhaps the most important factor in this determination is the public interest. The Court is not unsympathetic with defendants' position. It recognizes they are motivated not by a desire for personal gain but by a desire to oppose the unlawful acts of aggression committed by the Soviet Union against a relatively defenseless nation. However, the United States government, though not a party to this action, has appeared and assured the Court that,

> There is no current prohibition against the export from the United States to the U.S.S.R. of superphosphoric acid under the export control laws and regulations. . . .[and that] [A]ppropriate governmental action has been taken and will be taken with respect to exports to the Soviet Union to protect the interests of the United States, and that private action by longshore workers to interfere with such exports are not warranted.

Under these circumstances, the Court must find that defendants, though well-intentioned, may not rely on the public interest to justify a breach of their collective bargaining agreement. However, the government's statement makes it clear that its position is currently under review and that review is "proceeding quickly." In view of the fluidity of the present situation, the Court will limit its order to those three ships presently in port.

In conclusion, the Court finds that plaintiffs have established the necessary facts to entitle it to a prelim-

inary injunction and that such an injunction, in this case, is not prohibited by the Norris-LaGuardia Act. Plaintiffs are also entitled to an order directing defendants to process their related grievances in accordance with the contractual grievance procedure. The Court realizes, as noted by Judge Cox in *West Gulf Maritime* v. *Intern, Longshoremen's Assn., supra* at 375, that it may appear inconsistent to order defendants to arbitrate their grievances while holding that there exists no labor dispute. However, as in *West Gulf Maritime*, this is an action for breach of contract, and the answer lies in the terms of the contract. Paragraph 15(B) of the agreement is not limited to labor disputes but states generally, "Matters under dispute which cannot be promptly settled . . ." shall be subject to the arbitration procedures. Therefore, though defendants' grievances do not constitute a "labor dispute" as that term is used in § 4 of the Norris-LaGuardia Act, they are a "matter under dispute" and are governed by paragraph 15(B) of the agreement.

Therefore, the Court will this day enter an order enjoining defendants from refusing to load the M/V BOW SEA, the M/V BOW ROGN, and the M/V BOW LIND because of any grievance concerning shipment of cargo to the Soviet Union and ordering defendants to process any grievance over the shipment of cargo to the Soviet Union in accordance with the contractual grievance procedure contained in paragraph 15(B) of the agreement.

ISSUED at Jacksonville, Florida, this 1 day of February, 1980.

/s/ Susan H. Black
United States District Judge

APPENDIX C

29 U.S.C. § 185

Suits by and against labor organizations

Venue, amount, and citizenship

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 152(9)

DEFINITIONS

When used in this subchapter

. . . .

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.